

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2329

IN THE MATTER OF:

Served April 9, 1982

Investigation of Unauthorized)
Operations and Charges by WEBB)
TOURS, INC.)

Case No. MP-81-11

By Order No. 2262, served October 14, 1981, the Commission instituted an investigation of Webb Tours, Inc., pursuant to Title II, Article XII, Section 13(b) of the Compact pertaining to allegations that Webb has been charging charter and special operations rates higher than those contained in its published WMATC Tariff No. 1, that the carrier has been providing special operations sightseeing services from points outside the territory specified in its Certificate of Public Convenience and Necessity No. 33, and that the carrier has been providing a special operations tour not contained in its tariff. A public hearing on these matters was scheduled and the carrier was directed to produce books, papers, contracts and other records relevant to the investigation.

Webb timely tendered its records for examination and a public hearing was held on January 19, 1982. No evidence was presented on the matter of service being performed outside the territorial scope of Webb's certificate, and the party originally presenting the underlying complaint about such activity did not participate in the hearing despite adequate notice thereof. It was noted that Webb's tariff does not include a particular special operations trip although a description thereof is contained in advertising brochures available at various local hotels and motels. The record developed during the course of the proceeding, particularly from the staff's review of Webb's invoices, does not preclude a finding that the carrier has engaged in unauthorized one-way and round-trip transfer operations between points in the Metropolitan District in contravention of Title II, Article XII, Section 4(a) of the Compact. Inasmuch as that issue is not properly before us, however, we shall make no formal finding at this time. Nevertheless, the Commission expressly reserves its right to delve further into this matter should future events so warrant.

With respect to alleged overcharges for charter and special operations, Webb is in agreement with the staff's determination that the total of overcharges for the period March 1, 1981, through September 30, 1981, is \$43,300.07. During that period, Webb had increased its fares for both charter and special operations without appropriate Commission approval. Incorrect fares were imposed on almost all of Webb's customers, with the overcharges varying considerably in amount. A rate of \$41.25 per hour was charged for many charter customers whereas the tariff rate was \$25 an hour. Additionally, some customers were charged a four-hour minimum for service although Webb's tariff specified a three-hour minimum. An advertising brochure was available to the public at local hotels and motels during the relevant time period quoting special-operations fares in excess of published fares. Counsel for Webb stated that, upon issuance of Order No. 2262 which initiated this investigation, the carrier restored its proper tariff rates and filed an application for a general rate increase. 1/ The Commission received no complaints regarding overcharges from any of Webb's customers or other carriers in the industry, and the rate actually charged by Webb is apparently the rate quoted by the carrier to the customer at the time that service was ordered.

The carrier presented no affirmative evidence at the hearing.

Counsel for Webb suggested that factors other than the total amount of overcharges should be considered in structuring a remedy to the problem, including the size of Webb's business, the good faith of the carrier, the injury to the public, the gravity of the violation and the effect of "proposed penalties" 2/ on the carrier. The Commission has given consideration to those factors, as well as the asserted mitigating circumstances, our responsibility to uphold the law, and the effect of our decision on the confidence of the public and the security of the local carrier industry.

Unquestionably, the carrier is small in size with a total of 14 employees and gross revenue of approximately \$182,000 in 1980. 3/ The

1/ Case No. AP-81-29, filed November 25, 1981.

2/ While counsel invoked the term 'penalty' this Commission has no authority to impose civil penalties and is merely acting to compensate passengers for fares improperly collected.

3/ 1980 Annual Report of Webb Tours, Inc.

amount of money collected in excess fares is obviously quite large in comparison to the carrier's revenue, and the inevitable effect of directing a cash refund of the overcharges would be the financial ruin of the carrier. On the other hand, the injury to the public, as measured by the amount of the overcharges, is both substantial and manifest.

Clearly Webb violated Title II, Article XII, Section 5(d) of the Compact which states that "[n]o carrier shall charge, for any transportation subject to this Act, any fare other than the applicable fee specified in a tariff filed by it under this section and in effect at the time," and Commission Regulation No. 55-08 which prohibits collection of fares other than those in a carrier's tariff. The carrier has an affirmative duty to be familiar with the terms of the Compact and the Commission's rules, regulations, and orders thereunder. Yet, Webb distributed an advertising brochure containing rates in excess of the published rates for special operations and charged charter rates significantly higher than those contained in its tariff.

Under these circumstances the Commission finds that Webb has violated Title II, Article XII, Section 5(d) of the Compact and Commission Regulation No. 55-08, by overcharging its passengers in the amount of \$43,300.07.

The Commission does not doubt that some need existed for increased revenue and, in fact, we have recently approved a higher rate structure than that charged during the period March 1, 1981, through September 30, 1981, based on the financial data contained in Case No. AP-81-29. ^{4/} Moreover, no member of the public affected by the rates charged made any complaint to us.

Having found a violation herein, we must consider an appropriate remedy. Among choices considered but not deemed advisable at this time are suspension or revocation of the carrier's certificate pursuant to Title II, Article XII, Section 4(g) of the Compact and referral for criminal prosecution under Title II, Article XII, Section 18(d) of the Compact. While Webb's acts are an affront to the Compact and the regulations of the Commission, we believe that the carrier should be afforded an opportunity to make some form of restitution other than cash to correct past overcharges.

^{4/} See Order No. 2314, served February 23, 1982.

By virtue of Title II, Article XII, Section 15 of the Compact, "[t]he Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of this Act." Thus, the Commission will direct Webb to afford identifiable parties an opportunity to recoup the sums they were overcharged for service in 1981. In formulating a remedy the Commission must consider the effect on the carrier. Our goal here is to restore to the farepayers compensation for overcharges, but to do so without causing an impossible financial situation for Webb. 5/

Of the total overcharges of \$43,300.07, special operations comprise \$4,593.08 of the total and charter operations make up the balance of \$38,706.99. With respect to special operations, the passengers are not identifiable. Rather than setting up a non-cash reserve account for \$4,593.08 on Webb's books to be amortized against future revenue shortfalls, the Commission notes that in Case No. AP-81-29, we approved a new tariff structure giving the carrier an operating ratio of 95.0 percent. By adding the amount of \$4,593.08 to the revenue base in that proceeding we project an operating ratio of 93.5 percent which is in conformance with the rate of return suggested by Title II, Article XII, Section 6(a)(4) of the Compact. This ratio will be considered applicable for the future one-year period covered by the new tariff which became effective March 1, 1982, thus preserving actual rates which are lower than those which might otherwise have been found to be appropriate.

As for the charter operations overcharges of \$38,706.99, the parties that were overcharged are identifiable from Webb's records. However, because of the financial condition of the carrier and the fact that the involved parties are known, the Commission believes that a reasonable remedy would be the issuance of coupons 6/ to the aggrieved parties crediting the amount each party was overcharged at the rate of \$15 per hour against charges for future service, such service to be available at any time between September 7, 1982 and April 30, 1983. Given Webb's charter rate of \$44.50 per hour, the coupon user would pay \$29.50 an hour for service and realize a saving of \$15 an hour up to

5/ Webb's Balance Sheet dated December 31, 1980, shows a negative earned surplus of \$43,782.35.

6/ There will be no prohibition against transferability of the coupons.

the number of hours of service contained in the coupon. ^{7/} Coupon passengers, who also may retain the option of a private cause of action regarding overcharges, will be treated as all other customers with respect to advance reservations, subject to the availability of equipment. All overcharged charter customers will receive a cover letter from Webb along with the coupon explaining the procedure, such letter and coupon to be drawn up by Webb, together with stamped and addressed envelopes, to be reviewed and mailed by the staff of the Commission at least 60 days prior to the commencement of the service availability scheduled for September 7, 1982.

This is the first instance in which the Commission has adopted a coupon procedure and we must be able to determine how effective this course of action will be. Accordingly, we will require a report from Webb on or before May 31, 1983, setting forth the number of coupons redeemed, the total amount of overcharges "written off" at the rate of \$15 per service hour and value of coupons not redeemed. The Commission specifically retains jurisdiction in this matter as set forth below.

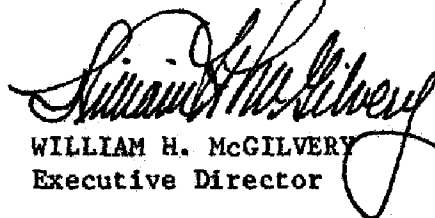
THEREFORE, IT IS ORDERED:

1. That Webb Tours, Inc., is hereby directed to charge and collect only those fares set forth in its WMATC Tariff No. 2.
2. That Webb Tours, Inc., is hereby directed to adjust its books and records to reflect inclusion of \$4,593.08 in its revenue base for the 12 months commencing March 1, 1982, and thereby produce a projected operating ratio of 93.5 percent for that period under WMATC Tariff No. 2.
3. That Webb Tours, Inc., is hereby directed to implement the above-described coupon restitution plan, enabling the Commission to review and mail the coupons and cover letters prepared by Webb and submitted in stamped, addressed envelopes at least 60 days prior to September 7, 1982.
4. That Webb Tours, Inc., is hereby directed to submit a report to the Commission summarizing the restitution plan as described above, to be prepared after the plan's April 30, 1983, conclusion, and filed on or before May 31, 1983.

^{7/} The receipt of \$29.50 per hour is necessary to allow Webb to cover variable expenses and certain other costs, thus preventing an excessive financial burden.

5. That in all other respects Case No. MP-81-11 is hereby discontinued subject to the continuing jurisdiction of the Commission, which is hereby expressly reserved, to direct further proceedings to assure the compliance of Webb Tours, Inc., with the requirements of the Compact and the rules, regulations and orders of the Commission thereunder, and to determine whether it is necessary to establish a reserve account on the carrier's books to effect further restitution for some or all of the remaining overcharges determined herein.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS CLEMENT, SCHIFTER AND SHANNON:


WILLIAM H. MCGILVERY
Executive Director